
From: Feldman, Matthew
Sent: Thursday, May 28, 2009 8:45 PM
To: 'rick.westenberg@gm.com'
Cc: Wilson, HarryDisabled; 'fred.fromm@gm.com'; 'jeff.tanenbaum@weil.com'; 'ted.waksman@weil.com'; 'robert.lemons@weil.com'
Subject: Re: Transfer of Delphi plans to GM plans - Prohibited if GM in BK

Thanks for the heads up.

----- Original Message -----

From: rick.westenberg@gm.com <rick.westenberg@gm.com>
To: Feldman, Matthew
Cc: Wilson, Harry; fred.fromm@gm.com <fred.fromm@gm.com>; jeff.tanenbaum@weil.com <jeff.tanenbaum@weil.com>; ted.waksman@weil.com <ted.waksman@weil.com>; robert.lemons@weil.com <robert.lemons@weil.com>
Sent: Thu May 28 20:43:08 2009
Subject: Fw: Transfer of Delphi plans to GM plans - Prohibited if GM in BK

Matt,

An issue has been raised regarding the inability to transfer pension liabilities to a bankrupt entity - please see the e-mail explanation below. Delphi identified the issue today and I wanted to make sure I flagged the issue for you in the context of your discussions with the PBGC. We can certainly arrange discussions with the appropriate people at Weil (I have copied Jeff, Ted, and Rob) and GM.

Best Regards,
Rick

----- Forwarded by Rick Westenberg/US/GM/GMC on 05/28/2009 07:40 PM -----

Kevin W. Cobb/US/GM/GMC
05/28/2009 06:50 PM

To
Rick Westenberg/US/GM/GMC@GM
cc
Edward W. Risko/US/GM/GMC@GM, Daniel Houlf/US/GM/GMC@GM Subject Transfer of Delphi plans to GM plans - Prohibited if GM in BK

We are aware that there have been discussions around transferring all, or a portion, of the Delphi hourly and/or salaried pension plans to the related GM pension plans. The purpose of this note is to advise that such a transfer(s) can not be done while GM is a Debtor in BK.

Specifically, 401(a)(33) of the Code provides that a plan sponsor in BK (GM) may not amend their plan(s) to increase liabilities, increase benefits or accelerate vesting. A transfer of a Delphi plan(s) would result in a prohibited increase in GM plan liabilities. There are two exceptions. First, such prohibition does not apply if the plan is fully funded. Second, de minimis transfers (less than 3%) that are approved by UST are

permissible. We currently believe that neither exception would be available for such a transfer(s).

Assuming GM enters BK on 6/1, any agreement to make such a transfer needs to be completed before 6/1, with an "as of" effective date before 6/1. In other words, an agreement between GM and Delphi would have to be reached before 6/1, and effective before 6/1, but the actual transfer of assets and liabilities could occur at a later date. After the 6/1 date, such an agreement could not occur until GM emerges from BK. However, if New GM assumes the GM plan(s) at Closing and is thereby not in BK, the prohibition would not apply to an agreement between New GM and Delphi. In this case (i.e. New GM not in BK following a 363 Closing on the purchase of Old GM's assets), New GM could agree to such a transfer from the Delphi plan(s).

I'm available to discuss at your convenience.

Kevin W. Cobb
Assistant General Tax Counsel
MC 482-C16-B16
300 Renaissance Center
Detroit, MI 48265
(313) 665-4085 (phone)
(313) 665-4125 (fax)

The information contained in this electronic message is confidential and may also be attorney-client privileged. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the agent or employee responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited.